



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/170577

PRELIMINARY RECITALS

Pursuant to a petition filed December 07, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on January 12, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the Department of Health Services, Division of Health Care Access and Accountability (DHS) correctly modified the request of [REDACTED] to provide personal care services to Petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

||

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: OIG by letter

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.

2. On August 13, 2015, a staff person from [REDACTED], signed a prior authorization request form, seeking 134 units / 33.5 hours per week of personal care (PCW) services with 6 post hospitalization RN visits (Exhibit 3, pg. 21)
3. On September 3, 2015, [REDACTED], completed a Personal Care Screening Tool (PCST), which indicated the need for assistance with the following tasks at the following levels

Bathing – Level C
Dressing – Level C
Grooming – Level C
Eating – Level C
Mobility – Level C
Toileting – Level C
Transferring – Level C
Medically Oriented Tasks – Level B

(Exhibit 3, pgs. 33-41)
4. On September 4, 2015, [REDACTED] [REDACTED] submitted the August 13, 2015, prior authorization request form. (Exhibit 3, pg. 21)
5. On October 5, 2015, the DHS sent [REDACTED] a fax with a PA error message stating, “10/5/15: Return; the medical necessity for PCW services is not clear. All PCST selections are indicated as constant supervision. Please provide additional information. Physician progress note dated 8/18/2015 is missing pages (1 of 9 but only received pages 1 and 3), please submit all pages. Also please submit the physician progress note prior to this one. Submit the physician signed and dated plan of care.” (Exhibit 3, pgs. 44 and 45)
6. On October 6, 2015, [REDACTED] faxed to DHS, the requested plan of care, which was signed by Petitioner’s physician on September 9, 2015. (Exhibit 3, pgs. 47-96)
7. On October 20, 2015, DHS sent to [REDACTED] and the Petitioner notices advising them that the request for services had been modified. DHS approved 28 units (7 hours) per week. (Exhibit 3, pgs. 97-102)
8. The Petitioner filed a request for fair hearing on December 7, 2015. (Exhibit 1)
9. On December 16, 2015, DHS issued a letter to the Petitioner and the Division of Hearings and Appeals indicating that it was now approving 62 units (15.5 hours) per week of PCW services. (Exhibit 2)
10. The Petitioner’s personal care worker is the mother of his children. She now lives with the Petitioner. (Testimony of [REDACTED])

11. Petitioner is 27 years old, with diagnoses of HIV infection with disseminated MAC (mycobacterium avium complex) disease, and back pain, secondary to VCV (varicella zoster virus) myelitis. (Exhibit 3, pgs. 61-81)
12. Petitioner is noted to be non-compliant with medications, because “some days it is just difficult to take the medications”. (Exhibit 3, pg. 81)
13. Since becoming ill, the Petitioner has lost 75 pounds and now weighs 100 lbs. He is between 5’9” and 5’10” tall. (Testimony of Petitioner’s PCW)

DISCUSSION

Timeliness of Petitioner’s Appeal

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning MA must be filed within 45 days of the date of the action. Wisconsin Stat. § 49.45(5); Income Maintenance Manual § 3.3.1. A negative action can be the denial of an application, the reduction of benefits, or the termination of an ongoing case.

The original date of action was October 20, 2015, when DHS sent notice that it was approving 28 units / 7 hours of PCW services. Petitioner’s appeal needed to be filed by Friday, December 4, 2015. Petitioner filed his appeal on December 7, 2015, 48 days after the date of action. As such, his appeal was untimely as to the original modification, and there is no jurisdiction to consider the appeal of the October 20, 2015 denial. However, DHS took a second action, by modifying the request again on December 16, 2015; this time approving 62 units / 15.5 hours per week of PCW services. Consequently, Petitioner’s appeal of that second action is timely.

Merits of Petitioner’s Appeal

Personal Care Services are a covered service by Medicaid. They are defined as, “medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community. These services shall be provided upon written orders of a physician by a provider certified under s. DHS 105.17 and by a personal care worker employed by the provider or under contract to the provider who is supervised by a registered nurse according to a written plan of care.” Wis. Admin. Code DHS §107.112(1)(a).

Prior authorization is required for personal care services in excess of 250 hours per calendar year and for home health services covered under Wis. Admin. Code DHS §107.11(2), that are needed to treat a recipient’s medical condition or to maintain a recipient’s health. Wis. Admin. Code DHS §107.112(b)

The Department of Health Services requires prior authorization of certain services to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and

6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

“In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.”

Wis. Admin. Code §DHS107.02(3)(e)

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Adm. Code. §DHS 101.03(96m)

Petitioner has the burden to prove, by a preponderance of the credible evidence, that the requested services meet the approval criteria.

██████████ on behalf of Petitioner, requested 33.5 hours per week of active PCW service hours. According to the letter from the Department of Health Services, Office of the Inspector General, DHS ultimately modified the request for active PCW service hours, approving 15.5 hours per week.

In determining how many hours of personal care services an individual is allowed, a service provider, in this case, Accomodating Solutions, completes a personal care screening tool (PCST). A link to the blank form can be found in the on-line provider handbook located, under topic number 3165 on the Forward Health website:

<https://www.forwardhealth.wi.gov/WIPortal>

In general, seven activities of daily living (ADLs) are reviewed: 1) Bathing, 2) Dressing, 3) Grooming, 4) Eating, 5) Mobility, 6) Toileting, and 7) Transfers. In addition, Medically Oriented Tasks (MOTs), if any, are examined.

The responses are then entered into a web-based PCST, which cross references the information with the Personal Care Activity Time Allocation Table. The Personal Care Activity Time Allocation Table is a guideline showing the maximum allowable time for each activity. *On-Line Provider Handbook Topic #3165*. A copy of the table was included as attachment 8 of the OIG letter, Exhibit 2.

The letter from the Office of the Inspector General indicated that DHS allowed the following times for the following activities:

1. Bathing: 30 minutes per day x 7 days	210 minutes per week
2. Dressing: 20 minutes per day x 7 days	140 minutes per week
3. Grooming: 30 minutes per day x 7 days	210 minutes per week
4. Eating: zero minutes	zero minutes
5. Mobility: zero minutes	zero minutes
6. Toileting: 10 minutes x 2x per day x 7 days	140 minutes per week
7. Transfers: zero minutes	zero minutes
8. MOTs: zero minutes	zero minutes

Total: 700 minutes week

Bathing

For bathing, DHS allowed the maximum amount of time permitted by the Personal Care Activity Time Allocation Table: 30 minutes per day x 7 days a week = 210 minutes per week. The Petitioner's personal care worker testified that this allocation was acceptable.

Dressing

Per page 4 of the PCST instructions, one episode of dressing is included in the 30 minutes allowed for bathing. The PCST instructions can be found in attachment 9 of Exhibit 2. They may also be viewed on-line at:

<http://www.dhs.wisconsin.gov/forms/F1/F11133a.pdf>

DHS allowed the maximum amount of time permitted for the second episode of dressing both upper and lower body: 20 minutes per day x 7 days a week = 140 minutes per week. Petitioner's personal care worker testified that this allocation was acceptable.

Grooming

DHS allowed the maximum amount of time permitted for grooming, 210 minutes per week. The Petitioner's personal care worker testified that this allocation was acceptable.

Eating

According to page 7 of the PCST instructions, "Eating" means "the ability to use conventional or adaptive utensils to ingest meals by mouth." Meal preparation is not included in this time. Id.

The PCST indicated that Petitioner needed assistance with eating at level "C" for three meals a day, meaning he can feed himself but needs assistance with set up, such as setting up adaptive utensils, or placing and removing a protective bib.

Petitioner's personal care worker testified credibly that the Petitioner is generally able to feed himself, but he becomes very fatigued in the evening and doesn't have energy to feed himself at dinner time. The Petitioner's personal care worker testified that when the Petitioner is that fatigued, he sometimes has difficulty holding things like forks in his hand. It is undisputed that the Petitioner has issues with fatigue and it is not surprising given the progression of his HIV infection and the occurrence of MAC disease. As such, it is found that it would be appropriate to allow PCW assistance, at level D, for dinner time, only. This works out to be 20 minutes, one time per day, 7 days a week or 140 minutes per week.

Mobility

The Petitioner's personal care worker testified that the Petitioner can move about his home safely, because he has a seated walker, so he can stop and rest. Petitioner's personal care worker indicated that there were some concerns about Petitioner falling, but there is nothing in Petitioner's medical records indicating a recent history of falls. As such, it is found that DHS correctly disallowed time for this task.

Toileting

The PCST indicated that the Petitioner needs assistance with toileting at level C, four times per day. DHS allowed assistance two times per day, because at the time [REDACTED] submitted the prior authorization request, DHS expected Petitioner's personal care worker to be present only two times per day. It is not clear on what documentation DHS relied to reach this conclusion. However, Petitioner's PCW has quit her outside employment to care for the Petitioner full time, whether paid or not.

Petitioner's personal care worker testified the Petitioner is so fatigued that he spends much of his time in bed. She also testified that the Petitioner has issues with incontinence 2-3 times per week and refuses to use incontinence products, because he is too proud.

One cannot approve PCW time for incontinence care, because Petitioner is too proud to use incontinence products. However, given that DHS did not dispute the fact that Petitioner needs assistance with toileting due to his fatigue and given that his PCW is present throughout the day, it is reasonable to allow PCW

assistance 4 times per day as requested. This works out to be 10 minutes per episode, 4 times per day, seven days a week for a total 280 minutes per week.

Transfers

The PCST indicated that the Petitioner needs assistance with transfers at level C, because he is light headed, weak and has an unsteady gait. With regard to his gait, it is unclear how that would interfere with his ability to transfer from one surface to another, such as from his bed to a chair, particularly since he uses a seated walker for ambulation. With regard to light headedness, I did not see anything in the medical records submitted by [REDACTED] that listed light headedness as an issue that was reported to Petitioner's physicians. As such, that cannot be used as a basis to approve PCW time for transfers.

With regard to weakness, the Petitioner's medical records indicate that the Petitioner does suffer from extreme weakness and back pain. Petitioner's medical records indicate that the Petitioner is seeking treatment for the pain, but any improvement has been mild. Petitioner's PCW testified that Petitioner is extremely weak and has little muscle left, noting that the Petitioner is now 100 pounds at 5 feet, 9 inches tall. Petitioner's PCW testified that Petitioner's fatigue is most pronounced in the evening.

However, it is unclear from the record whether Petitioner needs physical assistance from another person to complete the transfer, or if he can do it on his own, if allowed to take his time and rest when necessary. In the absence of information clarifying this issue, PCW assistance for transfers cannot be approved at this time.

Medically Oriented Tasks

It is undisputed that Petitioner takes medications twice per day. Under Medically Oriented Tasks (MOTs), the PCST indicated that the Petitioner needs assistance with medication at level B. Medicaid does not cover PCW assistance with medication at level B, meaning the Petitioner is able to self-administer medications, but needs another person or device to provide reminders or instructions on how to take the medication.

Medicaid only covers PCW assistance with medications when the need is at level D, meaning the patient needs assistance from a PCW to take the medications, such as placing the medication in his/her hand or mouth or putting drops in the patient's eye.

Petitioner's medical records show that the Petitioner struggles with medication compliance, because some days it is too difficult. As discussed under eating, Petitioner is unable to feed himself in the evening due to his fatigue and struggles to hold things in his hand when so fatigued. It is certainly more cost effective to pay for ten minutes a day of PCW assistance with medication, than to pay for medical treatment that becomes necessary due to medication non-compliance. Therefore, it is appropriate to approve PCW assistance with medication assistance at level D, twice per day, which works out to be 5 minutes per episode x 2 x 7 days = 70 minutes per week.

Total Time Needed for ADLs and MOTs

Based upon the hearing record, the following times for PCW assistance are being approved:

- | | |
|--|----------------------|
| 1. Bathing: 30 minutes per day x 7 days | 210 minutes per week |
| 2. Dressing: 20 minutes per day x 7 days | 140 minutes per week |
| 3. Grooming: 30 minutes per day x 7 days | 210 minutes per week |

4. Eating: 20 minutes x 1 per day x 7 days	140 minutes per week
5. Mobility: zero minutes	zero minutes
6. Toileting: 10 minutes x 4x per day x 7 days	280 minutes per week
7. Transfers: zero minutes	zero minutes
8. MOTs: 5 minutes x 2x per day x 7 days	70 minutes per week

Total: 1050 minutes week

Incidental Tasks

The PCST indicated that the Petitioner lived alone. However, Petitioner now lives with the mother of his children, who is also his PCW.

Per the on-line Provider Handbook, topic 3167, for individuals who do not live alone, time equal to 1/4 of the time it actually takes to complete Activities of Daily Living (ADLs) may be allocated for incidental cares such as changing and laundering linens, light cleaning in areas used during personal care activities, eye glass care and hearing aids, meal preparation, food purchasing and meal service.

One fourth of 1050 minutes is 262.5 minutes.

Thus, the total time allowed for PCW services works out to be:

1050 minutes per week for ALDs
+262.5 minutes per week for incidental activities

1312.5 minutes per week

1312.5 minutes ÷ 15 minutes per unit = 87.5 units per week rounded to 88 units
88 units per week = 22 hours per week of personal care services.

DHS approved 62 units/15.5 hours per week of personal care services. As such, its modification was not entirely correct.

Petitioner should be aware that if [REDACTED] can show a medical need for more time, it can always submit a new prior authorization request for additional time, along with the evidence to show the need for the additional time.

I note to the petitioner that his provider, [REDACTED] will not receive a copy of this Decision. In order to have the requested personal care service hours approved, the petitioner must provide a copy of this Decision to [REDACTED], who must then submit a *new* prior authorization request, along with a copy of this decision to receive the coverage approved below.

CONCLUSIONS OF LAW

DHS did not correctly modify the request of [REDACTED] to provide personal care services to Petitioner.

THEREFORE, it is

ORDERED

_____ is approved to receive payment for up to 88 units / 22 hours per week of personal care services provided to Petitioner.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 15th day of February, 2016.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 15, 2016.

Division of Health Care Access and Accountability